

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FOR THE COUNTY OF YAVAPAI

FILED
O'Clock *PM.*

NOV 16 2011

SANDRA K MARKHAM, Clerk
By *Jacqueline Harshman*

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL
DeMOCKER,

Defendant.

Case No. P1300CR2010001325

08 07:13AM

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

CASE STATUS CONFERENCE

JULY 21, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 VS) Case No P1300CR2010001325
7 STEVEN CARROLL)
8 DeMOCKER,)
9 Defendant)

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R DARROW
16 CASE STATUS CONFERENCE
17 JULY 21, 2011
18 Camp Verde, Arizona
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23

24 REPORTED BY
25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

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3
1 Proceedings had before the Honorable
2 WARREN R DARROW, Judge, taken on Thursday,
3 July 21, 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: STEVEN A. YOUNG, ATTORNEY
5 255 East Gurley Street
6 Prescott, Arizona 86301
7 (Appearing by telephone)

8 YAVAPAI COUNTY ATTORNEY'S OFFICE
9 BY JEFFREY PAUPORE, ATTORNEY
10 255 East Gurley Street
11 Prescott, Arizona 86301
12 (Appearing by telephone)

13 For the Defendant.

14 DeRIENZO & WILLIAMS
15 BY: CRAIG WILLIAMS, ATTORNEY
16 3681 North Robert Road
17 Prescott Valley, Arizona 86314
18 (Appearing by telephone)

19 MARICOPA LEGAL DEFENDER'S OFFICE
20 BY: GREGORY T. PARZYCH, ATTORNEY
21 222 North Central Avenue
22 Phoenix, Arizona 85004-2203
23 (Appearing by telephone)
24
25

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1 P R O C E E D I N G S

2 THE COURT: P1300CR201001325, State versus
3 Steven Carol DeMocker. Mr. DeMocker is present
4 seated at counsel table. His attorneys,
5 Mr Parzych and Mr. Williams, are both on the
6 phone.
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Correct?

MR. WILLIAMS: Yes, Judge

MR. PAUPORE: Yes, Judge.

THE COURT: The state's represented by
Mr Paupore and Mr. Young.

And you are both on the phone?

MR. YOUNG: Yes, sir.

MR. PAUPORE Yes, sir.

THE COURT: Ms. Bachman is here in person.
Normally I don't like to have a client, a
defendant, in court without attorneys present. But
the request -- this is a hearing that was set up on
very short notice. Mr. DeMocker is present and
won't be saying anything. He's here. That's his
right. He is seated at counsel table.

I didn't know about this hearing myself
until I came in late this morning. I had an
appointment in Prescott this morning What I
understand is this: The state, of course, made a

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03 05 22PM 1 request for oral argument. And I think Diane, my
03 05 27PM 2 judicial assistant, was attempting to determine a
03 05 32PM 3 time for that. There were some difficulties.
03 05 35PM 4 Mr. Williams suggested there be this hearing or
03 05 38PM 5 argument, I guess, to determine the scope of the
03 05 40PM 6 hearing, the length of the hearing, those things.

03 05 43PM 7 Mr. Williams.

03 05 44PM 8 MR. WILLIAMS: I'll make a record as far as
03 05 53PM 9 Mr. DeMocker being in the courtroom. After I got
03 05 59PM 10 the emails from your judicial assistant, I had
03 06 04PM 11 asked her for a little time so I could get in touch
03 06 08PM 12 with Mr. DeMocker.

03 06 09PM 13 I did talk to him and told him that I was
03 06 12PM 14 going to be telephonic, as was Mr. Parzych. He
03 06 16PM 15 didn't have any objection to that. And he knew he
03 06 19PM 16 would be in the courtroom alone. That was
03 06 21PM 17 discussed before he got there. I need to put that
03 06 25PM 18 on the record.

03 06 25PM 19 THE COURT: Okay.

03 06 29PM 20 MR. WILLIAMS: As far as the hearing goes,
03 06 32PM 21 this is my opinion on this: We asked for a
03 06 35PM 22 three-day evidentiary hearing. And I would like
03 06 38PM 23 the Court to officially put on the record that
03 06 41PM 24 you're denying that three-day evidentiary hearing.

03 06 44PM 25 If the Court does that, I have talked to
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03 06 47PM 1 Mr. Paupore, and we agree that we don't need oral
03 06 53PM 2 argument, that we'll submit it on the pleadings.
03 06 57PM 3 But I do need the request for the three-day
03 07 00PM 4 evidentiary hearing to be denied. Oh. Granted.
03 07 08PM 5 Granted.

03 07 14PM 6 THE COURT: You -- the condition for not
03 07 21PM 7 proceeding with oral argument, again, Mr. Williams
03 07 24PM 8 is what?

03 07 26PM 9 MR. WILLIAMS: I don't want it to be a
03 07 28PM 10 condition. I want to clear up that issue. I'm
03 07 31PM 11 sorry if I presented it like it was a condition.
03 07 34PM 12 We had asked for a three-day evidentiary hearing.

03 07 36PM 13 THE COURT: That was -- I'm sorry. I don't
03 07 39PM 14 want to interrupt, but to keep the thought process
03 07 43PM 15 in some logical order here. I think it was -- you
03 07 46PM 16 felt it was brief and the grounds were there that
03 07 50PM 17 if the motion were going to be denied -- and, of
03 07 56PM 18 course, it's a motion in the alternative. But if
03 07 58PM 19 the motion was going to be denied, you thought that
03 08 01PM 20 you wanted a chance to present evidence, and you
03 08 03PM 21 requested three days. That's how I thought that
03 08 07PM 22 came up.

03 08 07PM 23 MR. WILLIAMS: Okay.

03 08 08PM 24 THE COURT: Is that true, if am I accurate on
03 08 11PM 25 that?

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03 08 12PM 1 MR. WILLIAMS: My opinion on that was if the
03 08 20PM 2 Court was going to require evidence or argument or
03 08 23PM 3 that kind of thing, I thought we should have an
03 08 26PM 4 evidentiary hearing. If the Court says no, I'm not
03 08 29PM 5 going to give you a three-day evidentiary hearing
03 08 33PM 6 to present these witnesses, then I think we submit
03 08 35PM 7 it on the pleadings.

03 08 37PM 8 I don't think there is anything that
03 08 38PM 9 either our side or Mr. Young and Mr. Paupore are
03 08 42PM 10 going to add to what we've already said in our
03 08 45PM 11 pleadings, that I think it's a pointless exercise
03 08 48PM 12 to enter into oral argument.

03 08 51PM 13 THE COURT: Okay. I understand. If there is
03 08 53PM 14 not requesting -- not going to be actual evidence
03 08 58PM 15 presented other than what is in some form attached
03 09 03PM 16 to the pleadings, that type of thing. If it's
03 09 06PM 17 going to involve an actual hearing, there is no
03 09 08PM 18 need to have argument. I think that's what you're
03 09 12PM 19 saying.

03 09 12PM 20 MR. WILLIAMS: Yes. That's what I'm saying.

03 09 14PM 21 THE COURT: Mr. Paupore, you agree with that?

03 09 17PM 22 MR. PAUPORE: Well, Craig and I did talk about
03 09 21PM 23 this hearing. And after -- originally I told Craig
03 09 26PM 24 I thought we could submit it on the pleadings. If
03 09 32PM 25 we're going to have oral, I'd like to have maximum
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03 09 35PM 1 time of an hour.

03 09 36PM 2 THE COURT: And, Mr. Williams, you don't see
03 09 38PM 3 any reason for that?

03 09 39PM 4 MR. WILLIAMS: I don't see any reason for oral
03 09 42PM 5 argument. If we're going to enter into that, I'll
03 09 45PM 6 want an evidentiary hearing. If we're going to
03 09 47PM 7 submit on the pleadings, what has been said
03 09 50PM 8 encompasses everything that could be -- I think.
03 09 55PM 9 That's my opinion on that.

03 09 57PM 10 The state's entitled to ask for oral
03 10 00PM 11 argument if they want. And I'm not saying that
03 10 02PM 12 they don't. I was under the impression that we had
03 10 05PM 13 agreed that submit it on the pleadings.

03 10 10PM 14 THE COURT: I haven't decided --

03 10 13PM 15 Go ahead, Mr. Paupore.

03 10 15PM 16 MR. PAUPORE: That wasn't me.

03 10 16PM 17 THE COURT: Whoever started, go ahead. Okay.
03 10 23PM 18 Then I'll proceed. I have not decided whether or
03 10 28PM 19 not to have a hearing, an evidentiary hearing. I
03 10 37PM 20 have some questions, though, at least one that I
03 10 39PM 21 want to present. And it really arose -- it's
03 10 44PM 22 something that I thought it was the case earlier
03 10 47PM 23 sometime ago when I was reviewing records for
03 10 50PM 24 unsealing. I did that yesterday.

03 10 54PM 25 I was with the clerk for some length of
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03 10 59PM 1 time looking at redactions, discussing particular
03 11 02PM 2 records. And there are a number that are about to
03 11 07PM 3 be unsealed, should be very soon now. Fairly large
03 11 11PM 4 number.

03 11 16PM 5 I notice this, that the orders, the 15.9
03 11 19PM 6 orders -- and, Mr. Williams, in your pleading you
03 11 22PM 7 attached front pages of a number of the
03 11 25PM 8 applications or requests, motions, that kind of
03 11 28PM 9 thing.

03 11 28PM 10 In looking at the actual orders, I
03 11 32PM 11 noted -- and the clerk pointed this out to me. I
03 11 36PM 12 noted that hard copies of orders actually naming
03 11 40PM 13 the retained persons, whether they're experts or
03 11 44PM 14 investigators or other types of assistants, the
03 11 48PM 15 actual orders appointing those specific people and
03 11 52PM 16 the hourly amounts that were to be paid -- those
03 11 56PM 17 orders were given by hard copy to the county
03 11 59PM 18 attorney, basically, throughout the proceeding.

03 12 05PM 19 Is everyone aware of that?

03 12 08PM 20 MR. PAUPORE: Your Honor, Jeff Paupore. I am
03 12 12PM 21 not aware of that.

03 12 15PM 22 THE COURT: Mr. Williams?

03 12 18PM 23 MR. WILLIAMS: I'm not aware of that, Judge.

03 12 22PM 24 THE COURT: I mean these ex parte orders
03 12 25PM 25 actually have a box checked that shows the hard

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03 12 27PM 1 copy was distributed to the county attorney just in
03 12 31PM 2 the normal course. And I'm assuming that actually
03 12 35PM 3 happened. Mr. Paupore, you're saying right now
03 12 39PM 4 you're not aware of that?

03 12 43PM 5 MR. PAUPORE: I'm saying I have not seen the
03 12 47PM 6 orders. Did the clerk send them to our office? If
03 12 51PM 7 it says it was cced to the county attorney's
03 12 55PM 8 office, I have to assume it was sent to us. But I
03 12 59PM 9 have not seen them.

03 13 03PM 10 THE COURT: That's my understanding from
03 13 07PM 11 talking to the clerk's office is that box is
03 13 11PM 12 checked. It would have gone to your office. It
03 13 15PM 13 seems as though it would probably have ended up in
03 13 19PM 14 a file you have. And you don't know?

03 13 23PM 15 MR. PAUPORE: No, Your Honor. I thought I saw
03 13 27PM 16 every pleading I was supposed to see come across my
03 13 31PM 17 desk. But I'm not going to swear that happened.
03 13 35PM 18 Mr. Butner did talk about it. Neither us have any
03 13 39PM 19 recollection of seeing the ex parte. There was one
03 13 43PM 20 or two pleadings that we saw right in the very
03 13 47PM 21 beginning. And then that was it.

03 13 51PM 22 And I don't have any recollection, nor in
03 13 55PM 23 my conversations with Joe Butner, does he have any
03 13 59PM 24 recollections of seeing signed orders of 15.9
03 14 03PM 25 proceedings.

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03 13 40PM 1 THE COURT: Mr. Williams, Mr. Parzych, I don't
03 13 43PM 2 know if you have the file under the old case number
03 13 46PM 3 available. Have you been able to check that? Are
03 13 50PM 4 you in the process of checking that? It seemed to
03 13 53PM 5 me potentially a significant fact.

03 13 56PM 6 MR. WILLIAMS: I'm not prepared to discuss
03 14 00PM 7 that today. I guess we can look. I mean, if you
03 14 04PM 8 saw the size of this file, Judge, you'd understand
03 14 08PM 9 why I'm hemming and hawing about it.

03 14 12PM 10 THE COURT: I have a good notion of the
03 14 16PM 11 extensiveness of the file, Mr. Williams. And with
03 14 20PM 12 this motion having been brought -- and I saw from
03 14 24PM 13 your pleadings that you did attach the first page
03 14 28PM 14 of some applications. If you have the orders handy
03 14 32PM 15 or segregated into a work file for the motion or
03 14 36PM 16 something. I don't know. I'm just asking.

03 14 40PM 17 MR. WILLIAMS: I do not know that. And my
03 14 44PM 18 secretary who is on the case is on vacation. I
03 14 48PM 19 can't turn to her and say I'll be happy to check on
03 14 52PM 20 it.

03 14 56PM 21 MR. PAUPORE: Judge Darrow, you wouldn't
03 14 59PM 22 happen to have a copy of an example at your hand?

03 15 04PM 23 THE COURT: No. I don't. I went and actually
03 15 08PM 24 viewed the actual records in Prescott. That's
03 15 12PM 25 where they are.

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03 15 16PM 1 MR. PAUPORE: Did you notice who else was hard
03 15 20PM 2 copied with the actual orders besides the county
03 15 24PM 3 attorney's office?

03 15 28PM 4 THE COURT: Not specifically. I mean, I'm
03 15 32PM 5 pretty sure the defense. I noticed two checks in a
03 15 36PM 6 row on some of them. In terms of numbers, I think
03 15 40PM 7 there were 16 of those orders all together, 16
03 15 44PM 8 total orders relating to various experts or
03 15 48PM 9 different people. And I think all but two. So 14
03 15 52PM 10 is my estimate. 14 were actually provided to the
03 15 56PM 11 county attorney, according to the state's records.

03 15 59PM 12 What it does, it indicates this isn't
03 16 03PM 13 just a matter. Factually it isn't a question of
03 16 07PM 14 viewing -- I don't want to have any kind of
03 16 11PM 15 implication here is what I'm saying. It would not
03 16 15PM 16 just be viewing apparently hard copies.
03 16 19PM 17 Mr. Paupore indicates he was never was aware of
03 16 23PM 18 that throughout the proceeding.

03 16 27PM 19 MR. PARZYCH: Judge, I'm going through my
03 16 31PM 20 copies of those. Are you talking about the bottom
03 16 35PM 21 of that order where there is that stamp where they
03 16 39PM 22 write in the names and there is checks?

03 16 43PM 23 THE COURT: Yes.

03 16 47PM 24 MR. PARZYCH: The ones I'm looking at I see
03 16 51PM 25 the stamp, a check for Sears, a check for Osborn

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03:16:36PM 1 Maledon, a check for PD. I haven't gone through
03:16:39PM 2 all of them. Some of them I don't see that check
03:16:41PM 3 for the county attorney. But, again, I'm just
03:16:43PM 4 starting to go through them again.

03:16:45PM 5 THE COURT: The clerk informed me that she,
03:16:50PM 6 one of the clerks I was reviewing the records with
03:16:53PM 7 to look through redactions and the various
03:16:56PM 8 things -- she indicated that 14 of 16 indicated
03:16:59PM 9 county attorney distribution. That's interesting
03:17:02PM 10 in itself.

03:17:04PM 11 MR. PARZYCH: Yeah. I'll go through that in
03:17:06PM 12 more detail. The Court's aware we met with the
03:17:09PM 13 clerk and went through that. The first one I came
03:17:12PM 14 to does not have that check on the county
03:17:14PM 15 attorney's office.

03:17:17PM 16 THE COURT: Okay. It comes down to this: I
03:17:20PM 17 just haven't decided whether or not to have an
03:17:24PM 18 evidentiary hearing. I wasn't really -- I didn't
03:17:31PM 19 know we were going to be dealing with this case
03:17:34PM 20 this afternoon until, as I indicated, late this
03:17:38PM 21 morning.

03:17:40PM 22 So I've just got to look at this. I have
03:17:43PM 23 attempted to look into additional authority. I'll
03:17:46PM 24 tell you that. I've looked as best I can for
03:17:48PM 25 specific authority that deals with a situation of

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03:17:57PM 1 viewing this type of information, ex parte
03:18:05PM 2 information, that is viewed outside the persons it
03:18:12PM 3 was restricted to.

03:18:14PM 4 But I understand the positions of the
03:18:16PM 5 parties. You told me what you think about it, what
03:18:18PM 6 type of hearings should be conducted and whether or
03:18:22PM 7 not there needs to be oral argument, there is not a
03:18:24PM 8 hearing. I'll take all that into consideration.

03:18:29PM 9 Is there anything else you would like to
03:18:32PM 10 tell me?

03:18:33PM 11 MR. PAUPORE: Yes, Your Honor. Can you tell
03:18:35PM 12 us what case authority you're looking at?

03:18:37PM 13 THE COURT: I certainly would if I'm going to
03:18:39PM 14 use it in any fashion. It's a federal case. I
03:18:44PM 15 don't have it. I don't have any problem in -- just
03:18:49PM 16 as whenever I get legal authority, I obviously
03:18:53PM 17 don't ever attempt to investigate any kind of
03:18:56PM 18 cases. I certainly am charged with knowing the law
03:19:00PM 19 and doing what I can to discover the law.

03:19:05PM 20 MR. PAUPORE: The information that you just
03:19:08PM 21 provided us about the hard copies coming to the
03:19:12PM 22 county attorney's office is information that we did
03:19:15PM 23 not put into our pleadings, and this is new
03:19:19PM 24 information to me. And I think it has a
03:19:19PM 25 significant bearing on this issue.

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03:19:21PM 1 THE COURT: Well, it could. And, as I said, I
03:19:25PM 2 thought I had a recollection of someone mentioning
03:19:28PM 3 that this could have happened. Someone mentioned
03:19:31PM 4 to me sometime ago when the whole records issue
03:19:35PM 5 arose.

03:19:38PM 6 But yesterday specifically the clerk
03:19:37PM 7 mentioned that 14 of 16 of those orders went to the
03:19:41PM 8 county attorney, at least by the system that's used
03:19:45PM 9 in the county attorney's office. Whether that
03:19:47PM 10 actually happened, maybe that's a separate
03:19:49PM 11 question.

03:19:49PM 12 Just going by what boxes are checked,
03:19:51PM 13 Mr. Parzych says he found one order already. If it
03:19:54PM 14 just happened to be one of the two that wasn't,
03:19:57PM 15 then that's the way it is. I'll have to sort that
03:20:02PM 16 out.

03:20:02PM 17 MR. PARZYCH: Judge?

03:20:02PM 18 THE COURT: Yes?

03:20:04PM 19 MR. PARZYCH: As you've been talking, I've
03:20:06PM 20 been going through the orders. And I do see those
03:20:07PM 21 boxes. The problem I have is on our copies that
03:20:12PM 22 stamp doesn't go all the way through. We can read
03:20:15PM 23 the handwriting where it says, Osborn Maledon or
03:20:18PM 24 wrote in Sears.

03:20:19PM 25 But as I'm going through, it appears at
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03:20:21PM 1 least on the left-hand side there is a check mark
03:20:24PM 2 on a lot of those orders. Not only says county
03:20:27PM 3 attorney, but it appears it may say -- I think it
03:20:30PM 4 says victim witness. Again, our copy is hard to
03:20:33PM 5 read. But from what you're saying, Judge, I see
03:20:37PM 6 those checks on our copies too.

03:20:40PM 7 THE COURT: I'm just bringing that up. I saw
03:20:43PM 8 it yesterday. And I'm telling you. And consider
03:20:47PM 9 that.

03:20:55PM 10 And, Mr. Paupore, you're asking about the
03:20:57PM 11 authority. I have no problem at all about letting
03:21:00PM 12 people know what cases I see. If you want, I'll
03:21:04PM 13 email out the cites. All I've done actually is --
03:21:07PM 14 I don't know that they're that relevant. I have a
03:21:08PM 15 couple of cites. I'll just go ahead and email them
03:21:12PM 16 to both parties.

03:21:13PM 17 MR. PAUPORE: I'd appreciate that, Your Honor.
03:21:15PM 18 Thank you.

03:21:16PM 19 THE COURT: Mr. Paupore, anything else?

03:21:20PM 20 MR. PAUPORE: Well, I'm not sure where we're
03:21:24PM 21 going from there. Are we going to have -- I'm not
03:21:29PM 22 sure where the Court is headed right now. My
03:21:33PM 23 understanding of this hearing this afternoon was to
03:21:37PM 24 discuss and see the necessity or lack thereof of
03:21:42PM 25 holding oral argument and the length that would be

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03 21 46PM 1 required to do that. That was my understanding of
 03 21 49PM 2 the purpose of this hearing this afternoon.
 03 21 51PM 3 THE COURT: At least from what the defense
 03 21 55PM 4 thinks, whether even have an oral argument might
 03 22 02PM 5 relate to is there going to be any additional
 03 22 05PM 6 evidence. And the defense points out I can always
 03 22 08PM 7 ask for oral argument if I think it can be helpful.
 03 22 11PM 8 I can do that whether the parties request it or
 03 22 14PM 9 not.

03 22 17PM 10 You have requested it, Mr. Paupore. As
 03 22 20PM 11 you know, I generally grant that. Sometimes I find
 03 22 23PM 12 that it's not necessary, that an issue can properly
 03 22 26PM 13 be resolved without argument. But I'm inclined to
 03 22 29PM 14 grant oral argument when people request it.
 03 22 32PM 15 Normally about an hour covers oral arguments when
 03 22 35PM 16 you have everything thoroughly briefed.

03 22 38PM 17 And this is -- although you say what I
 03 22 41PM 18 mentioned about the actual hard copies going to the
 03 22 44PM 19 county attorney throughout the case apparently,
 03 22 47PM 20 that may be something you want to consider, both
 03 22 50PM 21 sides.

03 22 53PM 22 But I don't -- what I'm saying,
 03 22 56PM 23 Mr. Paupore, is there is a question of whether or
 03 22 59PM 24 not I want to -- I'm going to grant an actual
 03 23 02PM 25 evidentiary hearing.

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03 23 05PM 1 In that regard, Mr. Williams or
 03 23 08PM 2 Mr. Parzych, I'd like to know why you think an
 03 23 11PM 3 evidentiary hearing would be helpful to the Court.

03 23 14PM 4 MR. WILLIAMS: Well, Judge, because if the
 03 23 17PM 5 Court wants to find out -- well, let me put it a
 03 23 20PM 6 different way. If the pleadings, which I think are
 03 23 23PM 7 sufficient, are not going to do it for the Court, I
 03 23 26PM 8 want a chance to put all the employees of the
 03 23 29PM 9 county attorney's office on the stand to explain
 03 23 32PM 10 what they looked at and who told them to look at
 03 23 35PM 11 it. Who did they report that material to?

03 23 38PM 12 All we have now is just an in-house
 03 23 41PM 13 investigation from Mr. Jarrell and then what the
 03 23 44PM 14 clerk's office gave to us. We need to flesh this
 03 23 47PM 15 out and say, yeah, we're naming names. This is
 03 23 50PM 16 exactly where we're going. And the Court finds
 03 23 53PM 17 that necessary. Well, then we want to put that on.

03 23 56PM 18 May I respond, Your Honor?

03 23 59PM 19 THE COURT: If Mr. Williams is finished.

03 24 02PM 20 MR. WILLIAMS: I'm finished.

03 24 05PM 21 MR. PAUPORE: The way I understand the law,
 03 24 08PM 22 before you get to the question of whether or not
 03 24 11PM 23 you hold an evidentiary hearing, there first must
 03 24 14PM 24 be a showing of undue prejudice to the defense.
 03 24 17PM 25 The Court just informed us this afternoon that the

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03 24 19PM 1 clerk of the court copied the county attorney on
 03 24 22PM 2 every single 15.9 order except for two. And we
 03 24 25PM 3 never used that information.

03 24 28PM 4 I don't believe the defense has made that
 03 24 31PM 5 threshold showing that there has been any prejudice
 03 24 34PM 6 by the county of attorney's office. If there is no
 03 24 37PM 7 showing of prejudice, there is no need for an
 03 24 40PM 8 evidentiary hearing.

03 24 43PM 9 THE COURT: Mr. Williams?

03 24 46PM 10 MR. WILLIAMS: I've never agreed with the
 03 24 49PM 11 state's case on this that we have to demonstrate
 03 24 52PM 12 some kind of prejudice when there is the violations
 03 24 55PM 13 that we've shown have happened in the case. I
 03 24 58PM 14 don't think that that's a correct reading of the
 03 25 01PM 15 law.

03 25 04PM 16 If the Court's going to say where is the
 03 25 07PM 17 prejudice or where is this, then let us put on an
 03 25 10PM 18 evidentiary hearing, and we'll show you where it
 03 25 13PM 19 is. But we have been precluded from the inside
 03 25 16PM 20 information that the state has.

03 25 19PM 21 On the Jarrell report was just,
 03 25 22PM 22 basically, brushing over the top. That wasn't an
 03 25 25PM 23 independent agency or independent inquiry. And
 03 25 28PM 24 Mr. DeMocker would be entitled to an independent
 03 25 31PM 25 inquiry which -- what happens at an evidentiary

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03 25 34PM 1 hearing where you're given a right of direct
 03 25 37PM 2 examination of people who were involved in this
 03 25 40PM 3 case.

03 25 43PM 4 So if the Court is going to hold us to
 03 25 46PM 5 what I don't think is an appropriate standard --
 03 25 49PM 6 and I think, off the top of my head, the name of
 03 25 52PM 7 the case is Piccard. I don't think we need under
 03 25 55PM 8 these circumstances to demonstrate a Sixth
 03 25 58PM 9 Amendment violation or prejudice. But if the Court
 03 26 01PM 10 says we do, we need a three-day evidentiary
 03 26 04PM 11 hearing.

03 26 07PM 12 THE COURT: Mr. Williams, are you saying that
 03 26 10PM 13 would be to discover whether there was prejudice,
 03 26 13PM 14 actual prejudice?

03 26 16PM 15 MR. WILLIAMS: To demonstrate it. I don't
 03 26 19PM 16 have to discover anything. I know what happened.
 03 26 22PM 17 But if the Court needs -- and for purposes of
 03 26 25PM 18 edification, if we didn't demonstrate it, and I
 03 26 28PM 19 think we can with an evidentiary hearing.

03 26 31PM 20 THE COURT: You're saying you've demonstrated
 03 26 34PM 21 in the pleadings? That's the demonstration?

03 26 37PM 22 MR. WILLIAMS: Absolutely. I believe that I
 03 26 40PM 23 have 100 percent proved in those pleadings of what
 03 26 43PM 24 happened. I believe I've met our burden. That's
 03 26 46PM 25 my point of view on that.

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03 28 50PM 1 THE COURT: So you're saying you already know.
 03 28 52PM 2 So I'm trying to picture what would happen at the
 03 28 56PM 3 hearing, what kind of questions would be asked if
 03 29 00PM 4 it's already presented in full and everything you
 03 29 04PM 5 need to present.

03 27 09PM 6 MR. WILLIAMS: Judge, to me it was binary,
 03 27 14PM 7 either on off or. Either you went and viewed
 03 27 18PM 8 sealed ex parte documents or you didn't. Whether
 03 27 18PM 9 or not there is a check box on a copy to me doesn't
 03 27 21PM 10 make any difference. It doesn't change the
 03 27 23PM 11 evaluation at all.

03 27 24PM 12 THE COURT: And I'm not saying that is
 03 27 26PM 13 necessarily -- I just added that because I saw it
 03 27 28PM 14 and I thought people wanted to know about it. I
 03 27 31PM 15 don't know how significant it may or may not be
 03 27 35PM 16 other than -- you know -- if people are looking at
 03 27 38PM 17 orders, there it is going -- you know -- going out
 03 27 42PM 18 throughout. It's apparently indicated on the copy
 03 27 44PM 19 that this is what was happening.

03 27 46PM 20 I know that people get a lot of orders.
 03 27 50PM 21 And there is a tendency to look at the substance
 03 27 52PM 22 and not go looking into captions, the jurats, or
 03 27 57PM 23 the list of who receives them. So I know. I know
 03 27 58PM 24 that's just the nature of things.

03 28 02PM 25 I just brought that up because I think I
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03 28 04PM 1 would have to anyway. I think you both would want
 03 28 08PM 2 to know that. Both sides would want to know that.
 03 28 10PM 3 Mr. Williams, I'm not saying that's some
 03 28 13PM 4 key factor. It's just something both sides need to
 03 28 16PM 5 know.

03 28 16PM 6 MR. WILLIAMS: And I agree with that, Judge.
 03 28 20PM 7 My point is, like I just said -- you know -- must
 03 28 24PM 8 have been four, five minutes ago. What did you
 03 28 26PM 9 know? When did you know it? What did you do with
 03 28 29PM 10 the information? Who told you to do it? Who did
 03 28 32PM 11 you report it to? This is all information that I
 03 28 34PM 12 think if the Court requires it, some kind of
 03 28 38PM 13 showing of prejudice, which, again, I don't think
 03 28 42PM 14 we need to show.

03 28 44PM 15 I'm happy to do the evidentiary hearing
 03 28 47PM 16 and ask questions that aren't in-house questions.
 03 28 50PM 17 And that's all you got before you right now.

03 28 58PM 18 THE COURT: Mr. Paupore, anything else?

03 28 58PM 19 MR. PAUPORE: Your Honor, go back on the issue
 03 28 02PM 20 of having to show prejudice before we have a
 03 29 05PM 21 hearing. That's what the case law says. We don't
 03 29 09PM 22 get to the hearing, in my opinion.

03 29 10PM 23 And even is underscored by the fact that
 03 29 14PM 24 today I learn that the county attorney was
 03 29 18PM 25 receiving hard copies and this information was
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03 28 20PM 1 already in the defense attorney's hands. They had
 03 28 24PM 2 the orders. I don't have those orders in any file.
 03 29 27PM 3 I'm taking it strictly on face value and
 03 29 32PM 4 not doubting the Court one bit. The Court was
 03 29 35PM 5 directed to the ccing of these hard copies and
 03 29 42PM 6 advised the clerks sent hard copies to the county
 03 29 45PM 7 attorney's office on all but two 15.9 orders.
 03 29 49PM 8 That's a revelation to me.

03 29 51PM 9 But that's information that Mr. Williams
 03 29 53PM 10 has had. And that information tells me that how
 03 30 00PM 11 could there be prejudice when the clerk's office is
 03 30 03PM 12 the one that is sending out this information
 03 30 06PM 13 whether or not the county attorney is looking at it
 03 30 08PM 14 or not? It's being broadcast.

03 30 15PM 15 MR. PARZYCH: Judge, just so it's clear, our
 03 30 17PM 16 copies and what we have is we went there and we
 03 30 20PM 17 have copies of everything. That stamp does not
 03 30 22PM 18 come through clearly on our copies. Just by you
 03 30 25PM 19 saying that, you can kind of make out that it
 03 30 29PM 20 appears to say county attorney and victim witness.
 03 30 31PM 21 But, again, if this becomes an issue, we can bring
 03 30 34PM 22 in our copies. It's not clear, at least on the
 03 30 34PM 23 copy I'm looking at because that stamp didn't copy
 03 30 38PM 24 well.

03 30 38PM 25 MR. PAUPORE: And I appreciate that,
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03 30 38PM 1 Mr. Parzych. Because I've seen such paperwork
 03 30 42PM 2 before in different cases. So maybe my statement
 03 30 48PM 3 that you had that information before you was not
 03 30 50PM 4 entirely accurate. But clearly the Court has that
 03 30 53PM 5 information now.

03 30 58PM 6 THE COURT: It's in the file. And that is
 03 30 58PM 7 about to be unsealed here very shortly.

03 31 08PM 8 What I would like to know, Mr. Paupore,
 03 31 12PM 9 and I'm dealing with officers of the court here.
 03 31 17PM 10 I'd like to know if those documents are in your
 03 31 20PM 11 file. I'd like to know --

03 31 22PM 12 MR. PAUPORE: Your Honor, I will certainly
 03 31 26PM 13 make every effort to look for them. I don't know
 03 31 31PM 14 as I sit here right now. But I will certainly have
 03 31 38PM 15 the entire file scoured in looking for these orders
 03 31 40PM 16 to see if we have them.

03 31 41PM 17 THE COURT: Again, I'm only going by the
 03 31 44PM 18 clerk's procedure. I have no personal knowledge
 03 31 48PM 19 obviously if that routine was actually followed.

03 31 51PM 20 If it was, Mr. Paupore, I'd like to know
 03 31 54PM 21 what happened with those hard copies. And I
 03 31 58PM 22 mentioned this when we had the hearing before.
 03 32 00PM 23 This is really an awkward situation. You have
 03 32 04PM 24 officers of the court, and I'm trying to sort
 03 32 06PM 25 something out. I'm trying to get pertinent facts.
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03 31 09PM 1 . If this is the type of thing that
 03 32 13PM 2 requires separate legal counsel, we're getting into
 03 32 16PM 3 that kind of situation. And, you know, this is a
 03 32 19PM 4 case that's had a number of accusations and matters
 03 32 24PM 5 that really -- I don't want to go into it at this
 03 32 36PM 6 point. I have got a lot of information here. I
 03 32 38PM 7 have not decided whether or not I'm going to grant
 03 32 41PM 8 an evidentiary hearing, that request.

03 32 44PM 9 I would be granting an oral argument,
 03 32 46PM 10 Mr. Paupore. I'll tell you that.

03 32 48PM 11 And Mr. Williams.

03 32 50PM 12 In any event, there has been a request
 03 32 53PM 13 for oral argument and a motion of this type. I'm
 03 32 55PM 14 going to grant that request. I don't think it
 03 32 57PM 15 would be more than an hour, 90 minutes, though,
 03 33 00PM 16 permitted for that. And that's where it stands
 03 33 02PM 17 right now.

03 33 05PM 18 Thank you, we'll be in recess.

19 (The proceedings concluded.)

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1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE

3

4 I, Mina G Hunt, do hereby certify that I
 5 am a Certified Reporter within the State of Arizona
 6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript.

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action

16 In witness whereof, I have affixed my
 17 signature this 27th day of October, 2011

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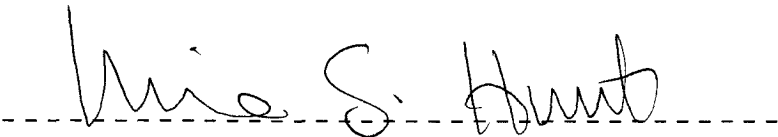
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

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